Supreme Court, U.S.
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No. 95-1908

In The

Supreme Court of the United States

October Term, 1995

TELECONCEPTS, INC.,

Petitioner,

vs.

MCI TELECOMMUNICATIONS CORPORATION and BELL OF PENNSYLVANIA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION FOR RESPONDENT MCI TELECOMMUNICATIONS CORPORATION

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5 pp

LIST OF PARTIES

LIST OF SUBSIDIARIES
(Other Than Wholly-Owned)

In-Flight Phope Corporation
General Communications Inc.
IFP Holdings, Inc.
Multimedia Medical Systems Inc.
New Triangle Finance, Inc.
New T. Investments, Inc.
Interactive Cable Systems
Silicon Valley Fiber L.L.C.

The parent corporation for MCI Telecommunications Corporation is MCI Communications Corporation.

REASONS FOR DENYING THE WRIT

Respondent MCI Telecommunications Corporation (hereinafter "MCI") submits this Brief in response and in opposition to the Petition for a Writ of Certiorari which has been filed on behalf of petitioner, Teleconcepts, Incorporated (hereinafter "petitioner"). For the reasons set forth herein, the petition should not be granted.[1]

At the outset, MCI notes that there is no basis for this Court to grant the petition. This matter does not fall within any of the categories of cases enunciated in Rule 10, in that:

a) the Third Circuit's opinion here is not in conflict with any decision of another United States Court of Appeals on the same important issue;

b) the decision does not involve an important federal question which was decided in conflict with a decision by a State Court of last resort;

c) the decision does not so far depart from the accepted and usual course of judicial proceedings as to warrant an exercise of this Court's supervisory powers;

and

d) the matter does not involve an important question of federal law that should be settled by this Court.

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1. This Brief will address only the issue raised in petitioner's third Question Presented for Review, as that is the only issue raised therein which pertains to MCI.

Indeed, petitioner does not in its petition assert that the instant matter falls within any of these very limited categories of cases. Therefore, for this reason alone, the petition should be denied.

However, even if this Court were to consider the merits of petitioner's argument, the petition should be denied.

In its one page argument in support of its application, petitioner suggests that the Court of Appeals erred in failing to apply the language of 47 U.S.C. § 415(e) to the two year statute of limitations period set forth in 47 U.S.C. § 415(a). MCI submits that the Court of Appeals was correct in declining petitioner's invitation to commingle the two statutory provisions, for they are clearly unrelated.

The FCC has recently reaffirmed the distinction between the two provisions in *Williams Telecommunications Group, Inc. v. The Chesapeake & Potomac Tel Cos.*, 8 FCC Rcd 1161 p. 16 n. 35 (1993), wherein it indicated that § 415(e) "concerns a carrier's liability to its customers for failure to transmit a message in accordance with its common carrier obligations." *See Central Scott Telephone Company v. Teleconnect Long Distance Services and Systems Company*, 832 F. Supp. 1317, 1320-21 (S.D. Iowa 1993). Therefore, there is no dispute that the language of § 415(e) does not apply to the statute of limitations set forth in § 415(a).

In rendering its decision, the Court of Appeals concluded that the limitations period applicable to MCI's charges was thirty days from the date of each invoice that was submitted to petitioner. At least one federal court has determined that the last date that a cause of action "accrues" under the related provisions of § 415(b) is "either the last date a carrier provides service or the date the bill is rendered, whichever is later." *American Telephone and Telegraph Company v. Delta Communications Corporation*,

114 F.R.D. 606, 609 n. 2 (S.D. Miss. 1986). Therefore, at a minimum, MCI's causes of action under § 415(a) did not accrue until the time that it forwarded each of its various invoices to petitioner. When coupled with the thirty-day "grace period" for payment of charges due that is contained in MCI's tariff, it is clear that the Court of Appeals was not incorrect in determining that the statute of limitations period was not the time of transmission of the message (47 U.S.C. § 415(e)), as urged by petitioner.

CONCLUSION

For the foregoing reasons, this Court is respectfully urged to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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